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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

F. BARI NEJADPOUR,

Plaintiff and Appellant,

v.

BRUCE R. FINK,

Defendant and Respondent.

B204937

(Los Angeles County
Super. Ct. No. BC371325)

APPEAL from an order of the Superior Court of Los Angeles County.

Reginald A. Dunn, Judge. Affirmed.

Law Offices of Nejadpour & Associates and Evelyn J. Abasi for Plaintiff and Appellant.

Law Office of Michael D. Franco and Michael D. Franco for Defendant and Respondent.

This is an appeal from an order awarding attorney fees to a defendant who prevailed on a special motion to strike. (Code Civ. Proc., § 425.16.) Our review is for abuse of discretion. (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1426.) We find that appellant has not shown an abuse of discretion, and affirm.

The stricken complaint was brought by appellant F. Bari Nejadpour against respondent Bruce Fink. It brought causes of action for intentional and negligent infliction of economic advantage and intentional and negligent infliction of emotional distress. After his special motion to strike was granted, Fink moved for fees in the amount of \$10,296. The motion attached the declaration of Fink's counsel attesting to the time spent on the case and his billing rate, and also attached detailed bills.

Nejadpour opposed the motion, contending that fees were excessive in that Fink had requested amounts spent in discovery, which were not recoverable, and that under the lodestar analysis, the hours spent were in excess of what was required to accomplish the tasks. The motion attached the declaration of counsel. Counsel wrote, inter alia, that Fink (a lawyer) and his counsel worked in the same office and were close friends, and that "plaintiff is under the strong belief that [counsel] is not charging [Fink] at his billable rate . . . but at a gentleman's agreement of a discounted rate"

The court deducted the fees incurred in discovery from the requested amount, and awarded the remainder, \$9,321. Nejadpour requested a statement of decision. The court wrote that an award of fees was mandatory, and that it had considered the declarations of defense counsel and plaintiff's counsel and defense counsel's detailed bills, and further explained its ruling on the fees incurred in pursuing discovery.

On this appeal, Nejadpour contends that the trial court failed to conduct a lodestar analysis, erroneously believed that it did not have the discretion to determine the reasonableness of the fees requested, and failed to scrutinize the relationship between Fink and his counsel.

We asked the parties to brief the issue of whether the order must be affirmed based on the inadequacy of the record, noting that plaintiff failed to provide, inter alia, reporter's transcripts of relevant hearings. Fink argued that the appeal should be

dismissed because Nejadpour failed to show error on an adequate record. Nejadpour argued that all the records which were available were designated and that no transcripts exist.¹

We presume in favor of the judgment on matters on which the record is silent (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141) and agree with Fink that Nejadpour has not established any abuse of discretion.

On this record, we cannot conclude that the court failed to conduct a lodestar analysis, or failed to consider Nejadpour's argument concerning the relationship between Fink and his counsel, or misunderstood its duty with regard to the decision on the amount of fees. Instead, the record reflected that the court had before it evidence of Fink's legal bills, and that the court considered the pleadings, the arguments included therein, and their attachments, and exercised its discretion in accord with the law.

Disposition

The judgment is affirmed. Fink to recover costs and attorney fees on appeal.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.

¹ The motion was apparently argued and taken under submission on November 5, 2007. Our record does not include a minute order for that date, but it does include the minute order of December 21, 2007, which constituted the court's ruling on submitted matter and statement of decision. The minute order indicates that there was an electronic recording device in the courtroom.